IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 266

Originating Summons No 1215 of 2021 (Registrar's Appeal No 101 of 2022)

Between

Allianz Capital Partners
GmbH, Singapore Branch

… *Plaintiff*

And

Goh Andress

… *Defendant*

GROUNDS OF DECISION

[Conflict of Laws — Choice of jurisdiction — Exclusive]
[Conflict of Laws — Natural forum]

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Allianz Capital Partners GmbH, Singapore Branch
v
Goh Andress

[2022] SGHC 266

General Division of the High Court — Originating Summons No 1215 of 2021
(Registrar's Appeal No 101 of 2022)
See Kee Oon J
2, 16 August 2022

26 October 2022

See Kee Oon J:

Introduction

1 The plaintiff is the Singapore branch of Allianz Capital Partners GmbH ("ACP"), a member of the Allianz Group and a subsidiary of Allianz SE which is a multinational insurance services company headquartered in Munich, Germany.[1] The defendant, Ms Andress Goh, is a Singapore citizen resident in Singapore.[2] She was previously employed by the plaintiff (and its predecessor entity) between May 2006 and December 2021.[3] The defendant was based in Singapore at all material times during her employment with the plaintiff. On

[1] Andreas Schlafer's 1st Affidavit dated 25 November 2021 ("1AS") at para 4.

[2] Andress Goh's 1st Affidavit dated 21 January 2022 ("1AG") at para 5.

[3] 1AS at para 5; 1AG at paras 5–6.

18 June 2021, the defendant resigned from the employ of the plaintiff. She was 56 years old at the time.[4]

2 The present appeal arose from the plaintiff's application in HC/OS 1215/2021 ("OS 1215"), seeking a number of declarations concerning the circumstances of the defendant's departure from the plaintiff's employment and her corresponding entitlements. In response to OS 1215, the defendant filed HC/SUM 308/2022 ("SUM 308") applying to stay the proceedings on the ground of *forum non conveniens*. The learned assistant registrar ("the AR") dismissed SUM 308 and the defendant appealed.

3 After hearing the parties' submissions, I allowed the defendant's appeal in HC/RA 101/2022 ("RA 101") and set aside the AR's order in SUM 308. The plaintiff has appealed against my decision in RA 101 and I now provide the full grounds of my decision, incorporating the oral remarks I delivered in allowing the appeal on 16 August 2022.

Background to the dispute

4 To provide some context to the dispute in OS 1215, I set out the background to the defendant's employment with the plaintiff.

5 The terms of the defendant's employment with the plaintiff were contained in two main documents: (a) an employment contract dated 19 October 2009 ("the Employment Contract"); and (b) the "Allianz Global Investors – Employee Handbook Singapore" (version 1.0) ("the Employee Handbook").[5]

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[4] 1AS at para 9; 1AG at paras 6 and 28.

[5] 1AS at para 6; Exhibits AS-1 and AS-2 in 1AS at pp 23–29 and 31–58.

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6 During the course of the defendant's employment with the plaintiff, she was selected to participate in the Allianz Capital Partners Incentive Plan for Indirect Private Equity Investments ("the Incentive Plan") in 2018, 2019 and 2020. The purpose of the Incentive Plan was to provide eligible directors and/or employees of the plaintiff and ACP ("Plan Participants") the opportunity to participate in the returns generated by ACP's investments, by way of incentive awards. Under the Incentive Plan, certain fund investments which ACP undertakes are pooled and aggregated for the calendar year in which the binding subscription to the investment is issued, each calendar year being referred to as "the Vintage Year". ACP generally receives a certain fee for the investments made during each Vintage Year ("Performance Fee") according to a performance fee agreement. Thereafter, ACP may in its discretion assure Plan Participants of a certain individual percentage of the Performance Fee it receives in respect of each Vintage Year ("Incentive Award"). Plan Participants are notified of the grant of an Incentive Award for a particular Vintage Year through a certificate which also informs them of the various vesting periods of their Incentive Awards ("Award Notice").[6] The Incentive Award and the resulting cash payments are subject to the terms and conditions set out in the contract governing the Incentive Plan ("the LTIP"), which includes rules on the vesting of the Incentive Awards.[7] For convenience, I refer to the LTIP broadly as comprising each of the individual contracts governing the Incentive Plan entered into by the defendant in respect of each Incentive Award.

7 As stated above, the defendant was granted Incentive Awards for the Vintage Years 2018, 2019 and 2020. In the Award Notices issued to the

6 1AS at paras 10–16; Exhibit AS-3 in 1AS at pp 60–75; Exhibit AG-3 in 1AG at pp 52–78.

7 1AS at para 14.

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defendant, it was stated that the Incentive Award for each Vintage Year would vest by 25% each calendar year on an annual basis for a period of four years. This would begin on 1 January of each Vintage Year and end on 31 December of the third year following the year to which the Vintage pertained.[8] This was also reflected in cl 5.1.2 of the LTIP.[9]

8 Of particular relevance to the present dispute are the "Leaver" provisions located at cl 5.2 of the LTIP. These provisions govern the circumstances where a Plan Participant ceases employment during the vesting period of an Incentive Award. The Leaver provisions classify these participants as either "Good Leavers", "Bad Leavers" or "Normal Leavers". For the present purposes, it is sufficient to consider the provisions concerning Good Leavers and Normal Leavers. In respect of Good Leavers, cl 5.2.1 provides as follows:

> 5.2.1 If the Plan Participant Leaves Employment and is a Good Leaver by any other reason than death, the Plan Participant keeps all vested Incentive Awards with regard to a Vintage and *all unvested Incentive Awards of such Leaver fully vest immediately*. If a Plan Participant is a Good Leaver by reason of death, all her or his unvested Incentive Awards fully vest immediately, the vested Incentive Awards remain unaffected and Clause 3.5 applies. [emphasis added]

In respect of Normal Leavers, cl 5.2.2 provides that:

> 5.2.2 If the Plan Participant Leaves Employment and is a Normal Leaver, the Plan Participant keeps all Incentive Awards with regard to a Vintage vested at the date the Plan Participant Leaves Employment, but *loses all unvested Incentive Awards*. [emphasis added]

9 A Good Leaver is defined at cl 1.2 as follows:

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8 Exhibit AG-4 in 1AG at pp 80–88.

9 Exhibit AG-4 in 1AG at p 58.

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> **"Good Leaver"** means any Plan Participant who Leaves Employment either (i) by reason of death, disability, *retirement* or termination by the employer because of downsizing, re-organization or termination of its business, or (ii) – in respect of any ACP Investment Professional – the ACP Management Board, in its discretion, deems the respective Plan Participant a Good Leaver, such discretion being subject to the approval of the ACP Compensation Committee, or (iii) – in respect of any Eligible ACP Board Member – both the ACP Competent Body and the AllianzGI Compensation Committee , in their discretion, deem the respective Plan Participant a Good Leaver. … [emphasis added]

A Normal Leaver is also defined at cl 1.2 as follows:

> **"Normal Leaver"** means any Plan Participant who Leaves Employment and is neither a Good Leaver nor a Bad Leaver;

10 On 18 June 2021, the defendant indicated her intention to resign via e-mail.[10] In her e-mail, she stated *inter alia*:[11]

> As a retiree, *I trust that I will be deemed a Good Leaver* (as per paragraph 5.2.1 of ACP's Incentive Plan agreed in October 2018 with Allianz Investors), as have others been before me, and thus *receive full vesting of all unvested carry as well as my AGI deferred variable compensation awards*. I would appreciate your written confirmation of this as well. [emphasis added]

11 This set off a chain of correspondence between ACP's Human Resources and Compensation department and the defendant, which I set out in brief:

(a) On 25 June 2021, ACP notified the defendant that she was a Normal Leaver under the conditions of the LTIP, given the defendant's decision to terminate her employment and her age. The defendant was

10 1AG at para 28.

11 Exhibit AS-5 in 1AS at p 87.

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invited to put in a request for the competent bodies managing the LTIP to exercise their discretion to deem her a Good Leaver.[12]

(b) On 30 June 2021, the defendant responded and indicated that she would appreciate that the relevant competent bodies assess and review her case and confirm her Good Leaver status given that she was "genuinely retiring" and had contributed immensely to ACP.[13]

(c) On 3 July 2021, ACP wrote back to the defendant explaining that a decision on the defendant's Good Leaver status could only be reached after the Allianz Asset Management Compensation Committee's next official meeting scheduled for 15 September 2021. Further, ACP reiterated that the defendant did not meet the LTIP requirements for being a Good Leaver and the decision on whether she would be deemed a Good Leaver was entirely at the discretion of the competent bodies managing the LTIP.[14]

(d) On 6 July 2021, the defendant replied expressing once again her disagreement that she did not qualify as a Good Leaver under the LTIP.[15]

(e) On 17 August 2021, ACP confirmed with the defendant that in exercise of its discretion, the competent bodies managing the LTIP had concluded that she was to be considered a Normal Leaver for the purpose of the LTIP.[16]

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12 Exhibit AS-6 in 1AS at p 90.

13 Exhibit AS-7 in 1AS at pp 93–94.

14 Exhibit AS-8 in 1AS at p 96.

15 Exhibit AS-9 in 1AS at p 98.

16 Exhibit AS-10 in 1AS at p 100.

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(f) On 18 August 2021, the defendant expressed her disappointment at the decision and her intention to seek legal advice.[17]

12 On 21 September 2021, the defendant's German counsel wrote to ACP requesting, amongst other things, that the competent bodies review their decision and grant the defendant Good Leaver status ("21 September Letter"). Should this not be acceded to, the defendant requested ACP to substantiate its decision to deem her a Normal Leaver.[18] ACP's German counsel sought and obtained an extension of time to provide the requested information. However, despite multiple reminders by the defendant's German counsel, the requested information was not provided by ACP.[19]

13 On 26 November 2021, the plaintiff filed OS 1215 seeking, *inter alia*, the following orders:[20]

(a) a declaration that the defendant is not retiring under the Employment Contract or the LTIP;

(b) a declaration that the defendant does not meet any of the requirements to be considered a Good Leaver under the LTIP and is not entitled to Good Leaver status for purposes of the LTIP; and

(c) a declaration that the defendant is a Normal Leaver for the purposes of the LTIP.

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17 Exhibit AS-11 in 1AS at p 102.

18 Exhibit AS-12 in 1AS at pp 104–107.

19 Defendant's submissions in RA 101 dated 29 June 2022 ("DS RA 101") at para 232; 1AG at paras 40–54.

20 OS 1215, prayers 1–3.

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14 On 29 November 2021, ACP's German counsel wrote to the defendant stating that the contents of the 21 September Letter were factually and legally incorrect and consequently their position on the defendant's Leaver status remained unchanged.[21]

Decision in SUM 308

15 In response to OS 1215, the defendant filed SUM 308 seeking a stay of proceedings on the ground that Singapore is not the appropriate or proper forum to hear the dispute engaged therein.[22]

16 The plaintiff resisted SUM 308 and raised the following arguments:[23]

(a) The dispute in OS 1215 fell within the exclusive jurisdiction clause in cl 7.3 of the Employment Contract ("EJC") and there was no strong cause why a stay ought to be granted in contravention of the said EJC.

(b) Even if the dispute in OS 1215 did not fall within the scope of the EJC, the factors surrounding the dispute pointed towards Singapore as a more appropriate forum.

(c) Even if there was some other available or more appropriate forum, there were circumstances by which justice required that a stay should not be granted.

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21 1AG at p 117.

22 SUM 308, prayer 1.

23 Plaintiff's submissions in SUM 308 dated 25 March 2022 ("PS SUM 308") at para 6.

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17 On 14 April 2022, the AR dismissed SUM 308. He distilled the two main issues in dispute in OS 1215 as follows: (a) whether the defendant had ceased to be employed or given notice of termination "by reason of retirement" ("the Retirement Issue"); and (b) whether the decision in the discretion of the ACP Management Board (and the ACP Compensation Committee) not to deem the defendant a Good Leaver may be challenged ("the Discretion Issue").[24]

18 In dismissing SUM 308, the AR held that the EJC in the Employment Contract should be given a broad or generous interpretation such that it covers the dispute in OS 1215.[25] In particular, the AR noted that the Retirement Issue concerns an issue arising under the Employment Contract, as the Employment Contract was relevant to the interpretation of when the defendant had ceased employment or had given notice by reason of retirement for the purpose of the LTIP.[26] In relation to the Discretion Issue, while the AR noted that it may also potentially engage the EJC, he made no definitive finding on this.[27] After finding that the EJC had been engaged, the AR found that the defendant had failed to show that there was strong cause to depart from the EJC. In any event, he also concluded that the connecting factors did not clearly point towards Germany as the more appropriate forum.[28]

19 The defendant appealed against the AR's decision.

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24 Certified Transcript of SUM 308 dated 14 April 2022 ("CT SUM 308") at para 2.

25 CT SUM 308 at para 4.

26 CT SUM 308 at para 5.

27 CT SUM 308 at para 8.

28 CT SUM 308 at paras 10–13.

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Issues to be determined

20 Arising from the above, the key issues for my determination were:

(a) whether there was a good arguable case that the present dispute in OS 1215 fell within the EJC in the Employment Contract;

(b) if (a) was answered in the affirmative, whether the defendant had shown strong cause to justify a stay of proceedings notwithstanding the EJC; and

(c) whether the defendant had shown that Germany was clearly the more appropriate forum for the dispute to be heard.

My decision

Issue 1: Whether there was a good arguable case that the present dispute fell within the EJC in the Employment Contract

21 As observed by the Court of the Appeal in *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Ltd* [2018] 2 SLR 1271 ("*Vinmar*") at [41], the party seeking to rely on an exclusive jurisdiction clause bears the burden of showing a "good arguable case" that the clause exists and governs the dispute in question. To establish a good arguable case, the party seeking to rely on the said clause must have the better of the argument, on the evidence before the court, that the clause exists and applies to the dispute. The threshold is thus more than a mere *prima facie* case, but it differs from the standard of a balance of probabilities: see *Vinmar* at [45]. Accordingly, in the present case, the burden fell on the plaintiff to demonstrate that it had the better argument that an exclusive jurisdiction clause existed and applied to the dispute in OS 1215.

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22 The plaintiff took the position that the dispute in OS 1215 was covered by the EJC contained in cl 7.3 of the Employment Contract which reads as follows:[29]

> 7.3. Singapore law shall be the sole and applicable law of *this Agreement and any dispute arising from it*. The Courts in Singapore shall be the sole forum to which any dispute shall be referred to and Singapore shall be the sole jurisdiction for such determination. [emphasis added]

23 It is quite clear then that focal point was whether the dispute in OS 1215 constituted a "dispute arising from [the Employment Contract]" for the purpose of cl 7.3. The plaintiff advanced two main arguments in this regard which I consider in turn.

24 The plaintiff's first argument was a straightforward one. It submitted that the entire dispute in OS 1215 arose as a consequence of the Employment Contract and therefore rightfully fell within the ambit of the EJC in cl 7.3. To this end, the plaintiff adopted the two categories of issues in dispute as identified by the AR, namely the Retirement Issue and the Discretion Issue (see [17] above).[30]

25 In relation to the Retirement Issue, the plaintiff argued that the question of whether the defendant had "retired" from the plaintiff's employment necessarily had to be decided in accordance with the terms of the Employment Contract and therefore the dispute was brought under the rubric of the Employment Contract.[31] This was especially so because the LTIP did not

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[29] Exhibit AS-1 in 1AS at p 28.

[30] Plaintiff's submissions in RA 101 dated 29 June 2022 ("PS RA 101") at paras 33 and 51.

[31] PS RA 101 at para 56.

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contain a definition of "retirement". On the contrary, the prevailing retirement age for employees was stipulated as "62 years" in the Employee Handbook which was expressly incorporated into the Employment Contract pursuant to cl 2.9. This same age was referred to in cl 6.2.2 of the Employment Contract which provided that an employee's employment may be terminated immediately upon written notice "[a]t the end of the calendar month during which [the employee] attains his/her 62nd year of age".[32]

26 In relation to the Discretion Issue, the plaintiff contended that the defendant's alleged claim of discrimination which arose from the ACP Management Board and the ACP Compensation Committee's exercise of discretion concerning the defendant's Leaver status would involve issues relating to the defendant's status, duties, and performance under the Employment Contract and may have to be considered and potentially compared against other employees.[33] Therefore, this issue would also fall within the ambit of the Employment Contract.

27 Having considered the plaintiff's submissions, I was unable to agree with the plaintiff's characterisation of the dispute as one that arose out of the Employment Contract. Instead, I agreed with the defendant that the dispute in OS 1215 was quite plainly a dispute arising from the LTIP, which was a separate agreement, distinct and independent from the Employment Contract. To my mind, the core of the dispute concerned the parties' differing interpretations of the *LTIP* with regard to the term "retirement" and the manner in which discretion was exercised in determining the defendant's Leaver status.[34] This

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32 PS SUM 308 at paras 12–13; PS RA 101 at paras 57–58.

33 PS RA 101 at paras 61 and 63.

34 DS RA 101 at paras 9 and 70.

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was plainly distinguishable from a dispute arising from the *Employment Contract* concerning the parties' rights and obligations or how any of its terms might operate. Indeed, OS 1215 does not on its face engage any dispute arising out of or in relation to the Employment Contract. The declarations sought in OS 1215 specifically concerned the determination of the defendant's Leaver status for the purpose of the LTIP which relatedly involved the determination of whether the defendant had "retired" under the Employment Contract or the LTIP. Therefore, the crux of the dispute did not directly engage the Employment Contract, but rather wholly concerned the interpretation of the LTIP and the defendant's rights thereunder. Any reference to the Employment Contract would be ancillary at best, to aid in the interpretation of the terms of the LTIP.

28 I turn now to consider the plaintiff's second argument. The plaintiff argued that even if the dispute in OS 1215 was construed as arising out of the LTIP and not the Employment Contract, the EJC contained in the latter ought to be given a broad and generous interpretation to cover disputes arising from both the Employment Contract and the LTIP.[35] In accepting this proposition in SUM 308, the AR was guided by the Court of Appeal's decision in *Bunge SA and another v Shrikant Bhasi and other appeals* [2020] 2 SLR 1223 ("*Bunge*") which cited with approval the English case of *Fiona Trust & Holding Corporation and others v Privalov and others* [2007] 4 All ER 951 ("*Fiona Trust*"). In *Bunge*, the court observed at [37] that:

> In more recent times, however, the courts have recognised an important overarching principle – that the wording or arbitration and *jurisdiction clauses should be given a broad or generous interpretation*, based on the presumption that rational businessmen are likely to have intended that all the questions which arise out of the relationship which they have entered into or purported to enter into, are to be submitted to the same forum … [emphasis added]

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35 PS RA 101 at para 7(a).

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29 At the outset, some appreciation of the context behind the application of this principle of broad and generous construction (the "*Fiona Trust* principle") in *Bunge* and *Fiona Trust* is required. The common thread running through both these cases is that the courts were tasked to determine whether a certain dispute arose out of a contract such as to fall within the scope of the respective jurisdiction or arbitration clauses contained in the *same* contract.

30 In *Fiona Trust*, the House of Lords was concerned with the scope and effect of identical arbitration clauses in eight charterparties in the Shelltime 4 form. The owners alleged that the charters were procured by bribery and purported to rescind them on this ground. The owners commenced court proceedings while the charterers applied for a stay in favour of arbitration under s 9 of the Arbitration Act 1996 (UK). The relevant dispute resolution clause in the charterparties read as follows:

> 41. (a) This charter shall be construed and the relations between the parties determined in accordance with the laws of England.
>
> (b) Any dispute arising under this charter shall be decided by the English courts to whose jurisdiction the parties hereby agree.
>
> (c) Notwithstanding the foregoing, but without prejudice to any party's right to arrest or maintain the arrest of any maritime property, either party may, by giving written notice of election to the other party, elect to have any such dispute referred … to arbitration in London …

31 As observed by the court at [4], cl 41(b) was a jurisdiction clause in respect of "any dispute arising under this charter" which was then incorporated by reference – by the words "any such dispute" – in the arbitration clause in cl 41(c). Accordingly, the anterior question was whether cl 41(b) referred the question of whether the charters were procured by bribery to the jurisdiction of the English court. If it did, then a party may elect under cl 41(c) to have that

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question referred to arbitration. Lord Hoffmann, with whom the other Lordships agreed, held that the language of cl 41 did not exclude disputes concerning the validity of the contract and that the construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal: see *Fiona Trust* at [13] and [15].

32 In *Bunge*, the claims in the proceedings arose out of a merchanting trade structure between the Bunge Group and Advantage Overseas Private Limited that involved three back-to-back contracts per transaction (a "string sale"). Not all of the string sale contracts had the same governing law and exclusive jurisdiction clauses. The question before the court was whether the phrase "arising out of or in connection with" contained in the exclusive jurisdiction clauses adopted in each of the individual string sale contracts was broad enough to encompass disputes arising from pre-contractual conduct. On the authority of *Fiona Trust*, the Court of Appeal held that the phrase was not temporally specific and that as a matter of contractual interpretation, the phrase was in principle broad enough to cover disputes arising from a legal relationship derived from specific pre-contractual conduct that may have led to parties entering into the contract that contained a dispute resolution clause with this wording (at [38]).

33 It can therefore be seen that the relevant clauses in *Bunge* and *Fiona Trust* were interpreted broadly solely to expand the temporality of the clauses in a single contract to cover within their ambit disputes in relation to pre-contractual conduct (in *Bunge*) and the validity of the contract (in *Fiona Trust*).

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However, as the defendant rightly pointed out,[36] Singapore courts have yet to extend the *Fiona Trust* principle to multi-contract disputes to determine whether an exclusive jurisdiction clause contained in one agreement is wide enough to cover disputes arising from another agreement.

34 Helpfully, the English courts have had the opportunity to consider such situations involving multi-contract disputes and extended the *Fiona Trust* principle to deal with them: see, for example, *Altera Absolute Global Master Fund v Sapinda Invest SARL* [2018] 1 All ER (Comm) 71 ("*Altera*") and *Etihad Airways PJSC v Flöther* [2020] 2 WLR 333 ("*Etihad Airways*"). In *Terre Neuve SARL (a company incorporated in France) and others v Yewdale Ltd and others* [2020] EWHC 772 (Comm) ("*Terre Neuve*"), the court took stock of the authorities and provided guidance as to when a jurisdiction agreement contained in one contract may, on its proper construction, extend to a claim that is made under another contract (at [30]). I shall refer to this principle as the "extended *Fiona Trust* principle". I note that *Terre Neuve* was not cited at the hearing before the AR, but I found the observations concerning the extended *Fiona Trust* principle as set out in *Terre Neuve* at [31] to be instructive. I reproduce them at length below:

> (1) The principle is based on the construction of the relevant jurisdiction clause (… contained in "Contract A"): it is not based on an implication or implied incorporation of the jurisdiction clause from Contract A into a related contract (henceforth known as "Contract B").
>
> (2) As a matter of contractual construction, the wording of the clause in Contract A must be fairly capable of applying to disputes in Contract B. For example, a clause which stated that "any dispute under this contract shall be referred to arbitration" may not apply to disputes arising out of a (related) Contract B.
>
> (3) It is not legally or commercially odd or improbable that an agreement should have no jurisdiction clause. Equally an

36 DS RA 101 at para 45.

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agreement may have no jurisdiction clause *and* not be covered by a jurisdiction clause in a different agreement. … However, the absence of any *competing* jurisdiction clauses in any agreements within a particular set of agreements concluded by the parties for the same purpose, at the same time, and with the same subject matter, can be a relevant consideration (*Etihad* at [102(v)]).

(4) The principle normally applies where the parties to Contract A and Contract B are the same. This arises from the fact that the Extended Fiona Trust Principle ultimately involves an exercise in contractual construction. One would normally expect the parties to Contract A to intend that their dispute resolution mechanism be binding upon the parties to Contract A rather than also applying to persons who were not party to that contract at all. … The effect of Fiona Trust is that fragmentation of disputes under one agreement is unlikely to be what the parties intended. However, it is perfectly possible that there may be fragmentation of the resolution of disputes across several agreements (although whether this was the parties' intentions is to be considered when construing the contracts).

(5) The Extended Fiona Trust Principle normally applies where Contract A and Contract B are interdependent (Point (5a)), or have been concluded at the same time as part of a single package or transaction (Point (5b)), or (if concluded at different times) dealt with the same subject-matter (Point (5c)).

(6) A jurisdiction agreement in Contract A will generally apply to Contract B where that contract was entered into at the same or a similar time as Contract A. In this regard:

(a) In *Etihad* at [104], the judge noted that jurisdiction agreements in Contract A generally did not apply to a different agreement (Contract B) which had been concluded *prior to* the jurisdiction agreement coming into existence …

(b) Further, if Contract B was concluded prior to Contract A and the Contract A parties intended for the jurisdiction clause to deal with disputes under Contract B, one would normally expect Contract A to deal expressly with jurisdiction under Contract B. Quite apart from anything else the parties already know about Contract B's existence.

(c) If Contract A was concluded prior to Contract B, and a jurisdiction clause in Contract A was intended to cover Contract B, one might expect Contract B to cross-refer back to Contract A (albeit that ultimately what one is construing for present purposes is Contract A and on normal principles of contractual construction it stands to be construed at the date on which it

> was entered into). It is also to be borne in mind that it may be more difficult to conclude that parties to a particular jurisdiction agreement intended for that agreement to apply to disputes arising out of contracts that have not been concluded yet, particularly if such future contracts are not being discussed as part of the same package of agreements, or if the future contracts are in fact separated by a significant period of time from the conclusion of the jurisdiction agreement.
>
> [emphasis in original]

35 In summary, the key observations in relation to the extended *Fiona Trust* principle which I found to be apposite in the present case are as follows:

(a) As a matter of contractual interpretation, the wording of the clause in Contract A must be fairly capable of applying to disputes in Contract B.

(b) The extended *Fiona Trust* principle normally applies where:

(i) the parties to Contract A and Contract B are the same;

(ii) Contract A and Contract B are interdependent;

(iii) Contract A and Contract B were concluded at the same time as part of a single package or transaction; and/or

(iv) Contract A and Contract B dealt with the same subject matter (if concluded at different times).

36 Taking into account the observations espoused above in *Terre Neuve*, I found that the extended *Fiona Trust* principle had no application in the present case. It could not be relied upon to broaden the ambit of the EJC in the Employment Contract such as to cover the present dispute arising under the LTIP. Consequently, the plaintiff had not demonstrated there was a good

arguable case that the present dispute fell within the EJC in the Employment Contract.

37 First, as a matter of contractual construction, it was difficult to accept that the wording of the EJC in cl 7.3 of the Employment Contract was fairly capable of applying to disputes arising out of the LTIP. The EJC stipulates that any dispute arising from "*this* Agreement" [emphasis added] (*ie*, the Employment Contract) is to be referred to the Singapore courts for determination under Singapore law. It was also clear from reading the EJC in context of the entire Employment Contract that issues and disputes concerning the Incentive Plan were to be governed by separate agreements and *not* by the Employment Contract. This was evidenced by cl 2.5 of the Employment Contract which made reference to the Incentive Plan:[37]

> 2.5. Carried Interest
>
> The EMPLOYEE may participate in the carried interest program of ACP subject to the details to be provided in *separate agreements and notices* by ACP with regard to such carried interest program. [emphasis added]

Accordingly, based on a plain and contextual reading of the EJC, the present dispute which I found to have arisen out of the LTIP did not fall within its ambit.

38 Second, the Employment Contract and the LTIP were not concluded at the same time as part of a "single package or transaction". The defendant entered into the Employment Contract with the plaintiff on 19 October 2009. This was entirely separate and independent from her subsequently being selected to participate in the Incentive Plan in 2018, 2019 and 2020, which she duly

[37] Exhibit AS-1 in 1AS at p 24.

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accepted in executing the LTIP in 2019, 2020 and 2021 respectively.[38] Further, as noted above, cl 2.5 of the Employment Contract highlights that the defendant's participation in the Incentive Plan was to be subject to the details provided for in *separate agreements* and notices (*ie*, the LTIP and the Award Notices). This in effect delinked and excised matters relating to the LTIP from the Employment Contract such that the LTIP formed a separate agreement governing the Incentive Plan.

39 Third, following from the point above, the LTIP deals with entirely different subject matter from the Employment Contract. The plaintiff sought to argue that the LTIP was part of an "'*overall scheme*' pertaining to the [d]efendant's employment with the [p]laintiff and her financial incentives thereunder … and are therefore inextricably linked and traverse the same subject matter, namely, the rights and obligations of the [p]laintiff and the [d]efendant as employer and employee respectively".[39] While I accepted that the Incentive Plan and the corresponding Incentive Awards arose out of the defendant's employment with the plaintiff, the subject matter of the LTIP clearly governed a specific *part* of their employment relationship which the parties had thought fit to carve out and address separately in a subsequent agreement extraneous to the Employment Contract. Specifically, the LTIP governed matters concerning the administration of the Incentive Plan and the Incentive Awards awarded thereunder and nothing else. In fact, cl 8.5 of the LTIP states that:[40]

> 8.5 Employment
>
> The rights and obligations of any individual under the terms of her or his office or employment with any Allianz Group

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[38] Exhibit AG-4 in 1AG at pp 80–88.

[39] PS RA 101 at para 71.

[40] Exhibit AG-3 in 1AG at p 61.

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> Company shall not be affected by her or his participation in this Plan or any right which she or he may have to participate in it.

Thus, the defendant's rights and obligations as an employee of the plaintiff were governed by the Employment Contract which was distinct from and unaffected by the LTIP. There was no overlap in terms of subject matter between the two agreements, let alone an inextricable linkage between them.

40 Fourth, I agreed with the defendant that the Employment Contract and the LTIP were not interdependent in the same way as contemplated by case law such as *Altera* and *Etihad Airways*.[41] In *Altera*, the claimant exercised an option requiring the defendant to buy back 7.66m shares in a company called RNTS pursuant to a written agreement ("First Option Agreement"). In breach of contract, the defendant failed to complete the purchase. The claimant was able to sell slightly under 1.3m of the shares on the market, reducing its total holding in RNTS to 6,360,631 shares. On 26 August 2016, an oral agreement was concluded between the parties, where the defendant agreed to buy 1,360,631 RNTS shares ("the Sale Agreement"). Subsequently on 31 August 2016, the parties executed another written agreement which gave the claimant the option to sell to the defendant the remaining 5m shares, at a fixed share price ("Second Option Agreement"). Both the First and Second Option Agreements contained identical jurisdiction clauses providing that the English courts had non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreements or their subject matter or formation. The defendant issued a challenge to the English court's jurisdiction to hear the claim relating to the Sale Agreement. The court held that the claim for breach of the Sale Agreement was sufficiently connected with the Second Option Agreement so as to fall within its jurisdiction clause. In particular, the court noted at [21]

41 DS RA 101 at paras 103–105.

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that the "two agreements were interdependent". In support of this, it was observed that: (a) the Sale Agreement and the Second Option Agreement were discussed simultaneously and to that extent were "in respect of the same package"; (b) both agreements arose from the breach of the First Option Agreement which remained in place until both agreements had been entered into; (c) the two agreements together dealt with the balance of the shares remaining unsold under the breached First Option Agreement; and (d) the claimant's agreement to enter into the Second Option Agreement was conditional upon the purchase of the 1,360,631 shares under the Sale Agreement: see *Altera* at [20].

41 It is clear from the decision in *Altera* that whether two contracts are interdependent requires an appreciation of the context behind the agreements. In the present case, the Employment Contract and the LTIP were certainly not interdependent in the manner contemplated in *Altera*. As noted above, the contracts were wholly independent in that they were concluded at different times and concerned different subject matter. Nor was there the same sense of conditionality in relation to a particular transaction/subject matter as in *Altera*.

42 In *Etihad Airways*, the claimant agreed to advance €350m to a German airline in which it was a major shareholder ("the Facility Agreement"). The Facility Agreement was governed by English law and contained a jurisdiction clause providing for the exclusive jurisdiction of the English court. This was stated to be for the benefit of the claimant only, who was accordingly entitled to take proceedings in other jurisdictions. The claimant also provided the airline with a comfort letter, which did not contain a jurisdiction clause, in which it confirmed its intention to continue to provide the airline with financial support for 18 months from the date of the letter ("the Comfort Letter"). The airline subsequently commenced insolvency proceedings and ceased operations. The

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defendant, the airline's insolvency administrator, commenced proceedings in Germany against the claimant for breach of the Comfort Letter. The key issue before the court was whether the exclusive jurisdiction clause in the Facility Agreement applied to the dispute in respect of the breach of the Comfort Letter. The court ultimately held that there was no reason in principle why the jurisdiction clause in the Facility Agreement should not extend to disputes arising in relation to the Comfort Letter (at [69(a)]). In arriving at this decision, the court observed, *inter alia*, that both the Facility Agreement and the Comfort Letter were part of an overall support package which was provided by the claimant and the commercial background linking them was very closely connected (at [72] and [83]). Importantly, the court found that the claimant had a good arguable case that the Comfort Letter did not in and of itself create legally binding obligations and should be viewed as ancillary or linked to the Facility Agreement (at [84]).

43 It is evident from the court's observations in *Etihad Airways* that the Facility Agreement and the Comfort Letter were thus highly interdependent. This was quite unlike the present case where it was not disputed that the Employment Contract and the LTIP were both separate legally binding agreements, with neither derived from nor ancillary to the other. Further, as canvassed previously, the Employment Contract and the LTIP were not part of the same package or transaction (see [38] above).

44 Fifth, the parties to both the Employment Contract and the LTIP appear to be different. On one hand, the Employment Contract was expressed as being between the plaintiff (*ie*, Allianz Capital Partners GmbH, Singapore Branch) and the defendant. On the other hand, the LTIP was expressed to have been concluded between "Allianz Capital Partners GmbH" (*ie*, ACP) and the

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defendant.[42] It is accepted that a local branch office is considered an extension of its foreign parent company and is not to be considered a separate legal entity: see *TMT Co Ltd v The Royal Bank of Scotland plc (trading as RBS Greenwich Futures) and others* [2018] 3 SLR 70 at [53]. However, the Employment Contract itself appears to treat ACP and the plaintiff as separate parties. For instance, a distinction is made between "the COMPANY" (*ie*, the plaintiff) and "ACP" as seen in cl 2.5 (see [37] above). This to my mind indicated that the LTIP was intended to be administered and governed by ACP and not the plaintiff. Moreover, incentive payments under the LTIP were borne by ACP and not the plaintiff.[43] Therefore, disputes arising out of the LTIP and the Incentive Plan managed by ACP, the foreign parent company of the plaintiff, were unlikely to have been intended to be resolved in accordance with the EJC in the Employment Contract which was concluded between the plaintiff and the defendant based in Singapore.

45 Based on the foregoing analysis, it was unnecessary for me to examine the second issue of whether the defendant had shown strong cause to justify a stay of proceedings notwithstanding the EJC. I thus proceeded to consider whether the defendant had shown that Germany was clearly the more appropriate forum for the dispute to be heard.

Issue 2: Whether the defendant had shown that Germany was clearly the more appropriate forum for the dispute to be heard

46 The answer to whether Singapore was *forum non conveniens* ultimately fell to be determined according to the principles laid down in the well-settled

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42 Exhibit AS-4 in AS1 at pp 77–85.

43 Exhibit AG-4 in 1AG at pp 80, 83 and 86.

two-stage *Spiliada* test formulated in the seminal House of Lords decision of *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460.

47 At the first stage of the *Spiliada* test, the court has to determine whether, *prima facie*, there is some other available forum which is more appropriate for the case to be tried. At this stage, the court will consider a broad range of factors (see [48] below). If the court concludes that there is a more appropriate forum, the court will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nonetheless not be granted. This forms the second stage of the *Spiliada* test: see *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR(R) 377 at [14].

48 Under the first stage, in determining whether a foreign forum is clearly or distinctly more appropriate than Singapore for the trial of the substantive dispute, it is the quality rather than the quantity of the connecting factors that is crucial. The court's task is to search for those incidences or connections that have the most relevant and substantial associations with the dispute. Ultimately, the lodestar for a court tasked with identifying the natural forum is whether any of the connections point towards a jurisdiction in which the case might be tried more suitably in the interests of all the parties and for the ends of justice: see *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] 2 SLR 265 ("*Rappo*") at [69], [70] and [72]. As part of the court's determination, the court will ordinarily consider the following non-exhaustive factors (*Rappo* at [71]):

(a) personal connections of the parties and the witnesses;

(b) connections to relevant events and transactions;

(c) the applicable law to the dispute;

(d) the existence of proceedings elsewhere; and

(e) the "shape of the litigation", which is shorthand for the manner in which the claim and the defence have been pleaded.

First stage of the Spiliada test

(1) Personal connection of the parties

49 The plaintiff is located in Singapore and the defendant is a Singapore citizen resident in Singapore. At first blush, these factors appeared to point towards Singapore as the appropriate forum. However, I agreed with the defendant's argument that the plaintiff is after all the Singapore branch of ACP which is headquartered in Germany.[44] Moreover, as stated above at [44], ACP was a signatory to the LTIP and any incentive payments under the LTIP were ultimately borne by ACP and not the plaintiff.[45] Bearing these considerations in mind, I found that the parties' physical location or place of residence was a neutral factor.

(2) Availability of witnesses

50 As highlighted above, one of the defendant's key contentions in the present dispute was the manner in which discretion was exercised by the relevant bodies in determining her Leaver status. She indicated her intention to challenge that exercise of discretion on the grounds of discrimination based on gender or race (or ethnic origin).[46] To this end, she identified the following classes of witnesses as relevant to this issue: (a) members of the ACP

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44 DS RA 101 at para 208.

45 Exhibit AG-4 in 1AG at pp 80, 83 and 86.

46 DS RA 101 at para 188.

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Management Board and the ACP Compensation Committee;[47] and (b) a select few former employees of ACP.[48]

51 I deal first with the latter category of witnesses raised by the defendant, these being a number of ACP's former employees. The defendant hinted at the relevance of their testimony by suggesting that they could constitute circumstantial evidence demonstrating that persons of a different gender or race were statistically treated more favourably by being granted the status of a Good Leaver.[49] This would in turn be relevant to determine if the ACP Management Board and the ACP Compensation Committee had exercised their discretion in a fair and reasonable manner.[50] It is trite that the court hearing an application for a stay should not predetermine the witnesses that the parties should call: see *JIO Minerals FZC and others v Mineral Enterprises Ltd* [2011] 1 SLR 391 ("*JIO*") at [66]. Nonetheless, a defendant applying for a stay should not be permitted to assert, without substantiation, that it requires foreign witnesses because that would make it easy for defendants to manufacture a connecting factor. Therefore, a defendant should at least show that evidence from foreign witnesses is at least *arguably relevant* to its defence: see *JIO* at [67]. It was not entirely clear to me how the evidence of some of these former employees was relevant as they had left the employ of ACP *prior to* 2018 when the defendant signed the LTIP and prior to the commencement of the Incentive Plan in 2018.[51] The defendant had also not adduced any evidence at this juncture in relation to these former employees' Leaver statuses or how they might support her claim

47 1AG at para 66.

48 1AG at para 68.

49 DS RA 101 at para 188.

50 1AG at para 65.

51 Exhibit AG-3 in 1AG at pp 52 and 59.

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of discrimination. I was thus not satisfied that the defendant had managed to cross the threshold of demonstrating that evidence from these former employees was at least arguably relevant to her defence.

52 The second category of witnesses identified by the defendant were members of the ACP Management Board and the ACP Compensation Committee. According to the defendant, the ACP Management Board comprises the following individuals: Andrew Cox ("Mr Cox"), Michael Lindauer, Michael Pfennig and Andreas Schlafer ("Mr Schlafer"), all of whom are based in Germany save for Mr Cox who is based in London.[52] The defendant has been unable to ascertain the identities of the members of the ACP Compensation Committee despite making enquiries with the plaintiff.[53] The defendant contended that evidence from these witnesses is material in order to understand their motives and reasons for choosing not to confer her Good Leaver status.[54] Since a key plank of the defendant's defence rested on the discretionary decision of the members of the ACP Management Board and the ACP Compensation Committee, I found that the threshold of relevance had been met in respect of this category of witnesses.

53 In *JIO* at [63], the Court of Appeal clarified that there are two main aspects relevant in the assessment of this connecting factor concerning the availability of witnesses: (a) the convenience in having the case decided in the forum where the witnesses are ordinarily resident ("the Witness Convenience Factor"); and (b) the compellability of those witnesses ("the Witness Compellability Factor"). I consider them in turn.

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52 1AG at paras 66–67.

53 DS RA 101 at para 193; 1AG at para 66.

54 DS RA 101 at para 187.

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54 I was of the view that the Witness Convenience Factor was arguably less significant given the relative ease of travel and the accepted use and reliability of video-link testimony. Moreover, the defendant had not explained why the evidence of any of the potential witnesses could not be given via video-link: see *JIO* at [69].

55 In relation to the Witness Compellability Factor, I note that a Singapore court cannot compel a foreign witness to testify in a Singapore court (see O 38 r 18(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed)). Therefore, the fact that the members of the ACP Management Board and the ACP Compensation Committee are predominantly (and presumably) resident in Germany was a factor that pointed towards Germany being the natural forum. The plaintiff observed that one of the ACP Management Board members, Mr Schlafer, had indicated his willingness to testify in a Singapore court.[55] However, he is not a member of the ACP Compensation Committee and despite his claims to the contrary,[56] it was unclear if he is competent to give evidence on that Committee's decision-making process. The plaintiff also argued that the ACP Management Board members in their capacities as "managing directors" could not be heard as witnesses in German court proceedings as they represented the legal entity as part of the dispute and therefore may not be compellable, citing the opinion of its German law expert, Professor Dr Volker Rieble ("Professor Dr Rieble").[57] Even if this was accepted, the defendant's German law expert, Professor Dr Matthias Jacob ("Professor Dr Jacob") had

55 Andreas Schlafer's 2nd Affidavit ("2AS") dated 17 February 2022 at para 68.

56 2AS at para 68.

57 2AS at para 67; Professor Dr Volker Rieble's Affidavit dated 17 February 2022 ("1VR") at para 28 of the translated Expert Report.

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responded that the members of the Board may still be called to give evidence as *parties* to the proceedings.[58]

56 All considered, the Witness Compellability Factor still weighed in favour of Germany as the appropriate forum but the Witness Convenience Factor was a neutral consideration. As such, in my assessment, the availability of the witnesses did on balance point towards Germany as the more appropriate forum. That said, this was not a major consideration that I took into account.

(3) Connection to relevant events and transactions

57 It is true that the entirety of the defendant's employment relationship occurred in Singapore and that it was by virtue of the defendant's employment that entitled her to participate in the Incentive Plan and the benefits following therefrom. Nevertheless, as mentioned above at [27], the issues in the present dispute did not concern her employment with the plaintiff *per se*, including any of her rights and obligations under the Employment Contract. Instead, the present dispute wholly arose out of the LTIP, which was in fact a standard contract issued to all Plan Participants (who were made up of ACP employees all over the world) prepared by ACP which is headquartered in Germany.[59]

58 It was also clear that the administration of the entire Incentive Plan lay in the purview of the ACP Management Board which would likely be conducted out of the ACP headquarters in Germany. In this regard, cl 8.2 of the LTIP states that: "The ACP Management Board shall be responsible for administering this

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58 Professor Dr Matthias Jacob's 2nd Affidavit ("2MJ") at para 36 of the Expert Report.

59 2AS at para 21.

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Plan … The ACP Management Board's decision on any matter connected with this Plan within its set down terms is final and binding".[60]

59 Therefore, it appeared that the Incentive Plan and the LTIP which governed its terms and conditions were more closely connected to Germany and pointed towards it as the more appropriate forum.

(4) Applicable law governing the dispute

60 In my analysis, for the reasons below, the most significant connecting factor in the present case was the applicable governing law of the issues in dispute. In a stay application, it is appropriate for the court to form a *prima facie* view on the governing law, before all the evidence has been heard: see *Yeoh Poh San and another v Won Siok Wan* [2002] SGHC 196 at [15]. In order to do so, it is first necessary to characterise the issues raised by the claims: see *JIO* at [76].

61 As set out earlier at [17], the two main issues in the present dispute are the Retirement Issue and the Discretion Issue, both of which are ultimately *contractual* issues. The Retirement Issue involved the interpretation of the contractual term "retirement" in the LTIP. The Discretion Issue concerned the exercise of the ACP Management Board and ACP Compensation Committee's contractual discretion to confer on the defendant Good Leaver status. To this end, I was unable to agree with the plaintiff's characterisation of the Discretion Issue as one concerning *sui generis* statutory employment rights which were not contractual *per se*.[61] This appeared to misapprehend the defendant's primary argument in relation to this particular issue. The defendant clarified that she

60 Exhibit AG-3 in 1AG at p 61.

61 PS RA 101 at para 126.

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does not intend to make a direct claim under any German statute.[62] Instead, she is seeking a review of the contractual discretion exercised by the relevant bodies, where one of the relevant considerations would be whether they had exercised their discretion in a discriminatory fashion. If German law applied, considerations of discrimination would invariably require the interpretation and application of Germany's anti-discrimination laws.[63] Thus, the defendant was plainly not seeking to rely on or enforce German law as such.

62 Having determined that both the Retirement Issue and the Discretion Issue were in essence contractual in nature, the well-established three-stage approach to determine the governing law of a contract (see, for example, *JIO* at [79]) applies. At the first stage, the court considers if the contract expressly states its governing law. Here, cl 8.9 of the LTIP incontrovertibly contains a choice of law clause which provides as follows:[64]

> 8.9 Governing law
>
> This Plan and all Incentive Awards granted under it shall be governed by and construed in accordance with the law of the Federal Republic of Germany, excluding the application of the UN Convention on Contracts for the International Sale of Goods (CISG) and the German conflicts of laws rules.

63 It is thus stated in clear and unequivocal terms in cl 8.9 of the LTIP that the Incentive Plan is to be governed by German law. Although the plaintiff sought to engender some doubt as to whether this choice of law clause would

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[62] DS RA 101 at para 181.

[63] DS RA 101 at para 177.

[64] Exhibit AG-3 in 1AG at p 62.

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be given effect to by the German courts,[65] I was not convinced. The plaintiff relied on its expert, Professor Dr Rieble's opinion where he stated:[66]

> It is possibly inadmissible that in the arrangement chosen here the duty to perform work according to clause 1 of the Employment Contract and the financial compensation under the LTIP are not partially separate with the consequence that only one law would apply (here Singapore law). On the other hand, it could be said that the LTIP with its German choice of law only creates an additional financial compensation which is in addition to the basic remuneration … which is to be assessed under Singapore law. *As far as I can see, there is no court decision on this legal question in Germany.* If a German court were to rule that the financial compensation as a whole must follow the law of employment, the partial reference of the LTIP to German law would be invalid – and only the objective contractual statute and the choice of law in the employment agreement would apply: i.e. Singapore law. … [emphasis added]

With respect, it was odd that Professor Dr Rieble's opinion on the applicable governing law was premised on German choice of law rules.[67] It was also inconsistent with his opinion in the later part of his expert report which stated that it was *Singapore law* which decided whether and to what extent the choice of law clause in favour of German law should apply.[68] In fact, it was accepted by the plaintiff that Singapore choice of law rules, being the law of the forum, apply to determine the substantive law which governs the dispute: see *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2020 Reissue) ("*Halsbury's*") at para 75.273.[69] Accordingly, it did not matter whether cl 8.9 of the LTIP would be construed as a valid choice of law clause according to German choice of law rules. As such, I accorded little weight to this opinion.

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65 PS RA 101 at para 140.

66 1VR at para 17 of the translated Expert Report.

67 1VR at para 11 of the translated Expert Report.

68 1VR at para 20 of the translated Expert Report.

69 PS RA 101 at para 120.

64 I also did not accept the plaintiff's argument to the effect that since the term "retirement" in the LTIP had to be interpreted with reference to the Employment Contract (which was governed by Singapore law), therefore the governing law of the Retirement Issue was necessarily Singapore law.[70] This was clearly without merit. While it is uncontroversial that the term "retirement" in the LTIP may have to be interpreted with reference to the terms in the Employment Contract, this did not change the fact that the term to be interpreted was a term contained in the *LTIP*, a separate agreement with a separate choice of law clause in favour of German law.

65 Considering that German law was the governing law of the present dispute, I agreed with the defendant that a German court would be in a better position to engage with substantial and potentially complex questions of German labour law and take into account German public policy. As explained by the Court of Appeal in *CIMB Bank Bhd v Dresdner Kleinwort Ltd* [2008] 4 SLR(R) 543 at [63]:

> The reason why, in the consideration of the question of *forum non conveniens*, the issue of applicable law is a relevant factor is because where a dispute is governed by a foreign law, the forum will be less adept in applying that law than the courts of the country of that law, and there could be savings in time and resources in litigating the dispute in the forum of the applicable law. …

66 It bears mentioning that the German courts operating in a civil law jurisdiction would approach the present dispute quite differently from a Singapore court applying Singapore law. As Professor Dr Jacob opined in his expert report:[71]

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70 PS RA 101 at para 131.

71 Professor Dr Matthias Jacob's 1st Affidavit dated 21 January 2022 ("1MJ") at paras 40–41 of the Expert Report.

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> 40. … labour law in Germany is particularly complex due to the numerous legal sources (BGB, specific labour laws, EU law). The functioning of these individual laws as well as their limitations pose considerable challenges even to a German lawyer. The special form of German labour law involves a myriad of rules of interpretation which would be very unfamiliar to other civil law courts and certainly, common law courts. …
>
> 41. In the area of equal treatment and anti-discrimination, the level of complexity is more significant. Almost the entire legal framework is based on EU law and EU Directives, which must also be taken into account in the interpretation. In addition, the impact of the Charter of Fundamental Rights of the EU must be taken into account. The European Convention on Human Rights will potentially also have to be taken into account. …

67 In *Ivanishvili, Bidzina and others v Credit Suisse Trust Ltd* [2020] 2 SLR 638 at [106], the Court of Appeal observed that the governing law of the relationship between the parties is not only a relevant consideration in general, but a particularly significant consideration where it arises explicitly from choice of law clauses. In my judgment, the choice of German law expressed in cl 8.9 of the LTIP was indeed a significant connecting factor which pointed towards Germany as the appropriate forum.

(5) Existence of proceedings elsewhere

68 For completeness, at the time the matter was heard, there were no related proceedings taken out. As such, the question of *lis alibi pendens* was not engaged.

69 Having considered the factors in the round, I therefore found that Germany was clearly more appropriate than Singapore for the hearing of the present dispute.

Second stage of the Spiliada test

70 Finally, I move on to consider the second stage of the *Spiliada* test. The plaintiff had not raised any personal or juridical advantage that it would lose if the Singapore proceedings were stayed. Neither has the plaintiff pointed to any reason why substantial justice would not be achieved in Germany, the *prima facie* natural forum: see *Halsbury's* at para 75.096.

71 While I did not accept that the defendant would necessarily be prejudiced by having to defend OS 1215 in Singapore, I saw no compelling reason to refuse a stay.

Conclusion

72 To summarise, the plaintiff had failed to demonstrate a good arguable case that the present dispute fell within the EJC in the Employment Contract. The Retirement Issue and the Discretion Issue centred on the parties' differing interpretations of the LTIP in relation to the term "retirement" as well as the manner in which discretion was exercised in determining the defendant's Leaver status. They thus wholly arose from the LTIP and not the Employment Contract. Further, having assessed the relevant connecting factors, I was of the view that the defendant had demonstrated that Germany was clearly the more appropriate forum for the dispute to be heard. I therefore allowed the appeal and granted a stay of the proceedings in OS 1215.

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73 Accordingly, I awarded the costs of the appeal to the defendant at $12,000, inclusive of disbursements.

See Kee Oon
Judge of the High Court

Christopher James de Souza, Lee Junting Basil and Yan Chongshuo (Lee & Lee) for the plaintiff;
Pillai Pradeep G, Simren Kaur Sandhu and Wong Shi Rui Jonas (PRP Law LLC), for the defendant.

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